

1 Jon M. Sands
2 Federal Public Defender
3 District of Arizona
4 Cary Sandman (AZ Bar No. 004779)
5 Amanda C. Bass (AL Bar No. 1008H16R)
6 Eric Zuckerman (PA No. 307979)
7 Assistant Federal Public Defenders
8 850 West Adams Street, Suite 201
9 Phoenix, Arizona 85007
10 cary_sandman@fd.org
11 amanda_bass@fd.org
12 eric_zuckerman@fd.org
13 602.382.2734 Telephone
14 602.382.2800 Facsimile

Counsel for Petitioner

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

14 Clarence Wayne Dixon,
15
16 Petitioner,

17 vs.

18 David Shinn, et al.,
19
20 Respondents.

No. CV-14-258-PHX-DJH

DEATH-PENALTY CASE

**MOTION FOR STAY OF
EXECUTION**

**(Execution Scheduled for May 11,
2022 at 10 a.m.)**

(Expedited Ruling Requested)

24
25 Pursuant to 28 U.S.C. § 2551(a)(1) and LRCiv 7.2 Petitioner Clarence Wayne
26 Dixon, now incarcerated on death row at the Arizona State Prison Complex, in
27 Florence, Arizona, by and through his attorneys, respectfully moves this Court for
28 a stay of execution. **Dixon's execution is scheduled for 10 a.m. on May 11, 2022.**

On May 9, 2022, Dixon filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254 requesting that this Court issue a writ of habeas corpus granting him relief from his unconstitutional warrant of execution. Dixon’s Petition is presently pending before this Court, providing this Court with jurisdiction to issue a stay of execution. *See* 28 U.S.C. § 2251(a)(1). This motion is supported by the accompanying memorandum.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Clarence Dixon is a 66-year-old legally blind man of Native American ancestry who has long suffered from a psychotic disorder – paranoid schizophrenia. Previously, an Arizona court determined that he was mentally incompetent and legally insane. An Arizona Department of Corrections psychologist found that Dixon “operates on an intuitive feeling level, with much less regard for rationality and hard facts,” and that he is a “severely confused and disturbed prisoner.” (Hearing Ex. 5 at 1–2.)¹

For almost thirty years, Dixon has been unable to overcome his psychotically driven belief that all levels of the state and federal judiciary, including members of the Arizona Supreme Court, have conspired to deny him relief on a claim that the

¹ Dixon has filed concurrently with this motion a Petition for Writ of Habeas Corpus (ECF No. 86), and a Notice of Filing the State Court Record from the proceedings on his claim that he is mentally incompetent to be executed under the Eighth Amendment (ECF No. 88). Citations to the morning and afternoon transcripts of the Pinal County Superior Court hearing that occurred on May 3, 2022 are designated “Tr. 05/03/2022 a.m./p.m.” followed by the page number. Citations to the exhibits admitted into evidence at the hearing are designated “Hearing Ex.” followed by the exhibit number. Due to the multitude of errors in the transcription of the hearing’s afternoon session, Dixon is also including with the state court record the official audio recording of the hearing released by the Pinal County Superior Court. *See* Order, *In re State of Arizona v. Clarence Wayne Dixon*, No. S1100CR200200692 (Pinal Cnty. Super. Ct., May 6, 2022) (granting release of the audio recording of the competency hearing that occurred on May 3, 2022). Finally, items from the record on appeal from the proceedings in the Pinal County Superior Court are designated “Pinal ROA” followed by the document’s date, title, and page number.

1 Northern Arizona University (“NAU”) police department lacked authority to
2 investigate, arrest him, and collect his DNA in an unrelated 1985 criminal case.²
3 Since 1991, Dixon has prepared an unending stream of pro se filings on this issue,
4 fired his lawyers in the capital murder case so that he could continue to pursue this
5 issue, and more recently has filed judicial complaints seeking disbarment of the
6 Arizona Supreme Court Justices based on his belief that they are involved in an
7 “extrajudicial killing, an illegal and immoral homicide created in the name [of] and
8 for the people of Arizona.” (Tr. 05/03/2022 a.m. at 86; *see also* Hearing Exhibits
9 25–29, 32)

10 Dixon first raised the NAU issue in a pro se petition for postconviction relief
11 in July 1991, well before he was indicted for the 1978 murder. Dixon has recently
12 filed judicial misconduct complaints seeking the disbarment of the entire Arizona
13 Supreme Court. Dixon delusionally believes that he will be executed not because
14 of the 1978 murder for which he was convicted, but rather because all levels of the
15 judiciary have conspired to protect the State of Arizona University System, the State
16 police departments, and the State government from a “politically disastrous, [] dark
17 embarrassment that for many years a law enforcement entity has operated without
18 statutory authority.” (Hearing Ex. 12; *see also* Tr. 05/03/2022 a.m. at 69; *see also*
19 Hearing Exs 25–29.)

20 In *Ford v. Wainwright*, the United States Supreme Court held that “the Eighth
21 Amendment prohibits a State from carrying out a sentence of death upon a prisoner
22 who is insane.” 477 U.S. 399, 409–10 (1986). In so holding the Supreme Court
23 reasoned that it “is no less abhorrent today than it has been for centuries to exact in
24 penance the life of one whose mental illness prevents him from comprehending the
25 reasons for the penalty or its implications.” *Id.* at 417.

26 The Court clarified *Ford*’s substantive incompetency standard in *Panetti v.*
27

28 ² Dixon was never arrested by the NAU police and his DNA was collected
by the Arizona Department of Corrections.

1 *Quarterman* where it rejected “a strict test for competency [to be executed] that
2 treats delusional beliefs as irrelevant once the prisoner is aware the State has
3 identified the link between his crime and the punishment to be inflicted.” 551 U.S.
4 930, 960 (2007). Repudiating a competency standard that focuses on a prisoner’s
5 mere “awareness of the State’s rationale for an execution,” *id.* at 959, the Court held
6 that a prisoner must also have a rational understanding of the State’s reason for his
7 execution—that is, he must be able to “comprehend[] the *meaning and purpose* of
8 the punishment to which he has been sentenced,” *id.* at 960 (emphasis added).
9 Because Dixon does not have a rational understanding of why he is being executed,
10 the Eighth Amendment’s prohibition against cruel and unusual punishment bars his
11 execution and this Court’s intervention is required.

12 **II. Procedural Status**

13 The Supreme Court has clearly established that a petition for writ of habeas
14 corpus raising an Eighth Amendment claim of mental incompetency to be executed
15 is unripe until an execution is imminent. *See Panetti*, 551 U.S. at 947 (“[W]e have
16 confirmed that claims of incompetency to be executed remain unripe at early stages
17 of the proceedings.”); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 645 (1998)
18 (competency claim necessarily unripe until state issued warrant of execution). At
19 issue in *Panetti* was whether the restrictions on second or successive habeas
20 petitions found in § 2244(b) of the Anti-Terrorism and Effective Death Penalty Act
21 (“AEDPA”) applied to “a § 2254 application raising a *Ford*-based incompetency
22 claim filed as soon as that claim is ripe.” 551 U.S. at 945. The Supreme Court held
23 that it does not. *Id.* at 947 (“The statutory bar on ‘second or successive’ applications
24 does not apply to a *Ford* claim brought in an application filed when the claim is
25 first ripe. Petitioner’s habeas application was properly filed, and the District Court
26 had jurisdiction to adjudicate his claim.”).

27 In *Panetti*, following the Texas courts’ scheduling of the petitioner’s
28 execution date and denial of his mental incompetency claim, he “returned to federal

1 court, where he filed another petition for writ of habeas corpus pursuant to § 2254
2 and a motion for stay of execution.” 551 U.S. at 938, 941. The United States District
3 Court for the Western District of Texas “granted petitioner’s motion[] . . . to stay
4 his execution[]” while it adjudicated the merits of Panetti’s habeas petition raising
5 the Eighth Amendment incompetency to be executed claim. *Id.* at 941. Dixon’s
6 Petition arrives to this Court in the very same procedural posture, warranting a
7 similar course of action.

8 On April 5, 2022, the Arizona Supreme Court issued a warrant of execution
9 scheduling Dixon’s execution date for May 11, 2022. Warrant of Execution, *State*
10 *of Arizona v. Clarence Wayne Dixon*, No. CR-08-0025-AP (Ariz. Apr. 5, 2022); *see*
11 *also* Ariz. R. Crim. P. 31.23(c). On April 8, 2022, undersigned counsel filed a
12 petition in the Pinal County Superior Court pursuant to Arizona Code to determine
13 Dixon’s mental competency to be executed pursuant to A.R.S. § 13-4021 *et seq.*
14 (Pinal ROA 44.) That same day, the Pinal Superior Court found Dixon’s motion
15 timely and that it “satisfies the minimum required showing that reasonable grounds
16 exist for the requested examination and hearing, within the meaning of A.R.S. § 13-
17 4022(C) and as otherwise required by *Ford v. Wainwright*, 477 U.S. 399 (1986).”
18 (Pinal ROA 43.) The court scheduled a hearing on Dixon’s *Ford* claim under § 13-
19 4022(C) and ordered that he be evaluated by two experts, one nominated by the
20 State and the other by Dixon.

21 The hearing on Dixon’s *Ford* claim was held on May 3, 2022, concluding at
22 approximately 3:30 p.m. that afternoon. Close to midnight on May 4, 2022, the
23 superior court issued its ruling finding that Dixon failed to prove either by a
24 preponderance or by clear and convincing evidence that he is mentally incompetent
25 to be executed under the Eighth Amendment. (Pinal ROA 8.) Dixon received the
26 complete transcript of the hearing on May 5, 2022. On May 7, 2022, Dixon filed
27 pursuant to A.R.S. § 13-4022(I) a petition for special action review of the superior
28 court’s denial of his *Ford* claim in the Arizona Supreme Court. Petition for Special

1 Action, *Clarence Wayne Dixon v. Hon. Robert Carter Olson*, No. CV-22-0117
 2 (Ariz. May 7, 2022). On May 9, 2022, the Arizona Supreme Court declined
 3 jurisdiction over Dixon’s petition. Order, *Dixon v. Hon. Robert Carter Olson*, No.
 4 CV-22-0117 (Ariz. May 9, 2022). 28 U.S.C. § 2254(b)(1)(A) requires Dixon to
 5 exhaust state court remedies before applying to this Court for a writ of habeas
 6 corpus. He has done so.

7 In sum, under *Panetti*, Dixon’s federal habeas petition raising a *Ford* claim
 8 was not ripe until the Arizona Supreme Court set his execution date on April 5,
 9 2022. Furthermore, pursuant to 28 U.S.C. § 2254(b)(1)(A), Dixon was barred from
 10 filing a petition for writ of habeas corpus raising his *Ford* claim until he exhausted
 11 the remedies available to him in state court. The superior court rendered its
 12 judgment denying his *Ford* claim in the late-night hours of May 3, 2022. (Pinal
 13 ROA 8.) Dixon expeditiously sought the Arizona Supreme Court’s review of that
 14 decision and, the same day that court declined jurisdiction, has filed a Petition for
 15 Writ of Habeas Corpus and the instant motion—all less than one week after the
 16 Pinal County Superior Court rendered its judgment on Dixon’s *Ford* claim.

17 **III. Equitable Principles Weigh in Favor of Granting Dixon a Stay of** 18 **Execution**

19 The Supreme Court made it clear in *Barefoot v. Estelle*, 463 U.S. 880 (1983),
 20 *superseded on other grounds by* 28 U.S.C. § 2253(c), that a stay should be granted
 21 when necessary to “give non-frivolous claims of constitutional error the careful
 22 attention that they deserve.” 436 U.S. at 888. When a court cannot “resolve the
 23 merits of [a claim] before the scheduled date of execution,” a stay must be granted.
 24 *Id.* at 889. It is axiomatic that a court may grant a stay of execution if the moving
 25 party establishes that: (1) he has a strong likelihood of success on the merits; (2) he
 26 will suffer irreparable injury unless the injunction issues; (3) the balance of
 27 hardships tips in his favor; and (4) if issued, the injunction would further the public
 28 interest.” *Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005); *see also*

1 *Glossip v. Gross*, 135 S. Ct. 2726, 2736–37, *reh’g denied*, 136 S. Ct. 20 (2015)
 2 (stating that plaintiff seeking preliminary injunction must show “that he is likely to
 3 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
 4 preliminary relief, that the balance of equities tips in his favor, and that an injunction
 5 is in the public interest”). Consideration of these factors in Dixon’s case dictates a
 6 finding that a stay of execution is warranted.

7 i. Dixon’s *Ford* Claim is Likely to Succeed on the Merits

8 Dixon is likely to succeed on the merits of his *Ford* claim because the Eighth
 9 Amendment prohibits his execution. As Dixon’s Petition for Writ of Habeas Corpus
 10 demonstrates, he suffers from a severe mental illness, schizophrenia with paranoid
 11 ideations the hallmark of which is delusional and contaminated thought content. As
 12 a result of this psychotic illness, Dixon has experienced long-standing
 13 hallucinations and persecutory delusions, and consequently does not have a rational
 14 understanding of why the State is attempting to execute him. *See Panetti*, 551 U.S.
 15 at 958; *see also Ford*, 477 U.S. at 409. In its order denying Dixon’s *Ford* claim, the
 16 state court contravened and unreasonably applied the *Panetti* standard. (ECF No.
 17 86, Section IV.)

18 The state court also based its denial on unreasonable factual determinations,
 19 including by inexplicably ignoring the report and testimony of Dixon’s psychiatric
 20 expert, Lauro Amezcua-Patino, M.D., and instead relying on cherry-picked
 21 observations from the State’s expert, Carlos Vega, Psy.D., who conducted his
 22 evaluation of Dixon in 70 minutes over video, admitted never asking Dixon why he
 23 believed he was being executed (the critical question under *Panetti*), testified that
 24 he disagreed with and capriciously refused to apply the DSM-5 diagnostic criteria
 25 for schizophrenia, delusions, persecutory delusions, and failed to apply the DSM-5
 26 diagnostic criteria to his own diagnosis of antisocial personality disorder. (ECF No.
 27 86, Sections III–IV.) Dr. Vega then topped his testimony off with an admission that
 28 he had done “very little” research to determine what is required to perform an

1 evaluation to determine whether a prisoner is competent to be executed, and
2 misstated the standard for competency as “just a question of you know connecting
3 this murder to the execution.” (Tr. 05/03/2022 p.m. at 101.) But *Panetti* makes it
4 clear that a prisoner’s awareness of the crime and punishment is insufficient to
5 establish competency; rather, the prisoner must rationally understand the meaning
6 and purpose of his execution. 551 U.S. 959-60. Dr. Vega also testified that Dixon
7 has a rational understanding of the State’s reasons for his execution based, in part,
8 on Dixon’s pro se writings, despite admitting that he “didn’t read” and “just barely
9 [] looked at” them. (Tr. 05/03/2022 p.m. at 93.)

10 The record of the *Ford* proceedings leaves no room for doubt that the state
11 court’s denial of Dixon’s *Ford* claim contravened and unreasonably applied
12 *Panetti*, and was based on unreasonable factual determinations disentitling that
13 adjudication to deference from this Court under § 2254(d)(1) and (2). And because
14 the State failed to rebut the overwhelming evidence demonstrating that Dixon does
15 not rationally understand the State’s reasons for his execution as a function of the
16 delusional thought content to which his schizophrenic illness gives rise, Dixon is
17 likely to succeed on the merits of his *Ford* claim on de novo review. (ECF No. 86,
18 Sections III–IV.)

19 As alleged in Dixon’s concurrently filed petition for writ of habeas corpus,
20 Dixon’s paranoid schizophrenia—a psychotic illness diagnosed by clinical and
21 forensic psychiatrist Dr. Amezcua-Patino, and which the superior court found
22 proved by clear and convincing evidence—causes Dixon to experience
23 hallucinations and persecutory delusions, including that the state and federal
24 judiciaries are conspiring to execute him in order to save state agencies from
25 political embarrassment related to his meritless claim against the NAU police. Both
26 experts at the hearing, including the State’s expert, Dr. Vega, admitted that Dixon
27 fixates on a “deluded notion that the government has refused to agree with his legal
28 argument, not because his argument is not sound but rather the government is afraid

1 of the consequences of admitting they are wrong.” (Hearing Ex. 31 at 6.) Both
2 experts also agreed that Dixon has no memory of the crime for which he was
3 sentenced to death. (Hearing Ex. at 6; Tr. 05/03/2022 p.m. at 10–12.)

4 At the hearing, Dr. Vega testified that he never asked Dixon why he believes
5 he is being executed, explaining “I really didn’t have to ask him what he believed”
6 because “I just did not think it was necessary.” (Tr. 05/03/2022 p.m. at 100–01.)
7 Dr. Vega also testified that Dixon’s delusions meet the DSM-5 criteria for
8 delusions, but that he believed the DSM-5 definition of a “delusion” was incorrect
9 and therefore Dixon is not delusional. (Tr. 05/03/2022 p.m. at 70–77.) Dr. Vega
10 testified that the DSM-5 definition of “persecutory delusions” is likewise incorrect
11 because it “watered down the definition of delusions[.]” (Tr. 05/03/2022 p.m. at
12 77.) Dr. Vega stated that Dixon shows no signs of schizophrenia, despite
13 acknowledging that Dixon was consistently diagnosed with schizophrenia by
14 various psychiatrists and psychologists over the span of four decades, and despite
15 admitting that Dixon satisfied the DSM-5 criteria for the illness. (Tr. 05/03/2022
16 p.m. at 77–85.) Instead, Dr. Vega diagnosed Dixon with antisocial personality
17 disorder (ASPD), even though he admitted that Dixon did not satisfy the DSM-5
18 criteria for that diagnosis. (Tr. 05/03/2022 p.m. at 87–91.) And while Dr. Vega
19 pointed to Dixon’s writings as evidence of his rational understanding and thus
20 mental competency, he also admitted that he “just barely” read them. (Tr.
21 05/03/2022 p.m. at 93.)

22 When asked by counsel for the State, “[D]oes what Dixon’s specific
23 diagnosis is, ultimately affect your opinion about whether he has a rational
24 understanding of the state’s reason for his execution?” Dr. Vega responded “Yeah,
25 of course it does.” (Tr. 05/03/2022 p.m. at 43.) Dr. Vega then went on to testify that
26 Dixon’s primary diagnosis is antisocial personality disorder (“ASPD”).³ (Tr.

27 ³ Dr. Vega also testified that he disagreed with the diagnosis of schizophrenia,
28 but if that diagnosis were correct, it would be “comorbid to the principle [sic]
diagnosis of a personality disorder[.]” (Tr. 05/03/2022 p.m. at 77.) When confronted

1 05/03/2022 p.m. at 43.)

2 Rejecting Dr. Vega’s ASPD diagnosis and non-diagnosis of schizophrenia,
3 the superior court found that Dixon proved by clear and convincing evidence that
4 he “has a mental disorder or mental illness of schizophrenia[.]” (Pinal ROA 8 at 2.)
5 Nevertheless, the court inexplicably found testimony presented from Dr. Vega
6 “persuasive” and relied on that testimony to find that Dixon could not meet his
7 burden to demonstrate that he is not competent to be executed. (Pinal ROA 8 at 4.)
8 The Superior Court’s reliance on Dr. Vega’s observation that Dixon has a rational
9 understanding of the State’s reasons for his execution is also objectively
10 unreasonable because Dr. Vega testified that Dixon’s “specific diagnosis []
11 ultimately affect[s his] opinion about whether he has a rational understanding of the
12 State’s reason for his execution[.]” (Tr. 05/03/2022 p.m. at 43.), and the superior
13 court found Dr. Vega’s non-diagnosis of schizophrenia erroneous (Pinal ROA 8 at
14 2). By Dr. Vega’s own admission, if his non-diagnosis of schizophrenia was
15 erroneous, then his related opinion about whether Dixon rationally understands the
16 State’s reasons for his execution cannot be relied upon. (Tr. 05/03/2022 p.m. at 43.)

17 While acknowledging *Panetti*’s standard, the superior court failed to
18 correctly apply it. (Pinal ROA 8 at 2–4.) In finding Dixon’s mental competency
19 claim unproved, the court relied on statements from Dixon that reflected his
20

21 with the DSM-5 diagnostic criteria for antisocial personality disorder, which
22 demonstrates that schizophrenia cannot be comorbid to antisocial personality
23 disorder, Dr. Vega had no coherent response. (Tr. 05/03/2022 p.m. at 91–92.) *See*
24 *also e.g., Rogers v. Dzurenda*, 25 F.4th 1171, 1188 (9th Cir. 2022) (“ . . . [I]t was
25 accepted at the time of Rogers’s trial that a diagnosis of schizophrenia preempts, or
26 precludes, a diagnosis of ASPD. This information was readily available in the
27 ASPD section of the DSM-III. . . . As Dr. Molde later testified at the evidentiary
28 hearing before the district court, ASPD by definition requires a normal mental status
examination. The preemption line of questioning was important because Dr.
Gutride diagnosed Rogers with ASPD, but his reports described symptoms
consistent with schizophrenia, and therefore symptoms that were inconsistent with
the normal mental status examination that ASPD requires.”).

1 awareness that the State says it “want[s] to kill me for murder[.]” (Pinal ROA 8 at
2 2–4) But that is precisely the “too restrictive” inquiry that the Supreme Court
3 rejected in *Panetti*. 551 U.S. at 956–58. Dixon’s awareness of the State’s rationale
4 does not show he has a rational understanding of it. *Id.* at 958–59 (“The potential
5 for a prisoner’s recognition of the severity of the offense and the objective of
6 community vindication are called into question, . . . if a prisoner’s mental state is
7 so distorted by mental illness that his awareness of the crime and punishment has
8 little or no relation to the understanding of those concepts shared by the community
9 as a whole.”).

10 The superior court also characterized Dixon’s reaction to the judiciary’s
11 denial of his legal claims as suggesting only his perception of judicial “bias.” (Pinal
12 ROA 8 at 2–4.) But that Dixon believes there is judicial bias is irrelevant to the
13 critical question of whether Dixon’s perception of bias is grounded in reality. The
14 evidence shows it is not: the judges in Arizona are not, as Dixon believes,
15 orchestrating his execution as part of a coverup for the NAU police’s illegal
16 investigative, arrest, and DNA collection activities back in 1985—all in order to
17 protect the NAU police and government entities from the embarrassment of that
18 exposé. (Hearing Ex. 2 at 3–4; Tr. 05/03/2022 a.m. at 89; Tr. 05/03/2022 p.m. at
19 44–45.) Both experts agreed that Dixon has a delusional notion that the judicial
20 system and actors in it are conspiring to deny his claim against the NAU police
21 despite knowing it is meritorious in order to protect the government from
22 embarrassment. (Tr. 05/03/2022 a.m. at 69; 05/02/2022 p.m. at 24; Hearing Ex. 31,
23 Vega Report at 6.)

24 As discussed elsewhere, the superior court found that Dixon proved by clear
25 and convincing evidence that he has paranoid schizophrenia. (Pinal ROA 8 at 2.)
26 However, it dismissed the unrefuted medical evidence of Dixon’s psychotic
27 delusional thought process resulting therefrom as only “arguably delusional” and
28 merely reflective of Dixon’s “favored legal theory.” (Pinal ROA 8 at 2–3.) Again,

1 Dixon does have a favored legal theory, but that alone begs the relevant question:
2 whether that theory is grounded in a serious mental illness which impairs Dixon's
3 rational understanding of the reasons for his execution. *Panetti* required the
4 Superior Court to focus on that question.

5 The superior court should have assessed Dixon's mental competency within
6 the framework of his schizophrenic illness and the psychotic delusions to which it
7 characteristically gives rise. *Id.* at 960 ("The beginning of doubt about competence
8 in a case like petitioner's is not a misanthropic personality or an amoral character.
9 It is a psychotic disorder."). Applying *Panetti*'s framework here, the superior court
10 failed to assess how Dixon's favored legal theory is inextricably linked to his
11 delusional, psychotic-driven belief that "[t]hey say they want to kill me because I
12 killed someone. But I know that they want to kill me because they don't want to be
13 embarrassed"—that is, embarrassed by the exposé that the NAU police in 1985
14 acted without statutory jurisdiction by arresting him in an unrelated criminal case,
15 investigating, and collecting his DNA. (Tr. 05/03/2022 a.m. at 62–66; *see also*
16 Hearing Ex. 31 at 6.) Under *Panetti*, "the legal inquiry concerns whether these
17 delusions can be said to render [Dixon] incompetent." *Id.* at 956. The evidence
18 before the superior court shows it does.

19 In sum, the superior court contravened and unreasonably applied *Panetti*,
20 ignored evidence in the record before it demonstrating that Dixon experiences
21 delusions as a result of his paranoid schizophrenic illness that prevent him from
22 rationally understanding why he is being executed, and made findings—including
23 as to the "persuasive[ness]" of observations offered by Dr. Vega—that are flatly
24 contradicted by the record and the court's finding that Dr. Vega's opinion that
25 Dixon does not have schizophrenia was not credible. (*See* Pinal ROA 8 at 2.)
26 Consequently, the state court's rejection of Dixon's *Ford* claim contravened and
27 unreasonably applied *Panetti*, and was based on unreasonable factual
28 determinations. 28 U.S.C. § 2254(d)(1), (2).

1 Because Dixon's Petition for Writ of Habeas Corpus demonstrates that the
 2 state court's reliance on an expert who misunderstood the competency standard
 3 under *Panetti*, who disregarded the DSM-5 definitions for schizophrenia, delusions,
 4 persecutory delusions, and antisocial personality disorder in favor of his own more
 5 restrictive and made up definitions, and who also admitted to not reading the very
 6 documentary evidence on which he based his ultimate opinion, the state court's
 7 decision is disentitled to deference under AEDPA. Dixon's *Ford* claim has a
 8 substantial likelihood of success under de novo review.

9 ii. Dixon Will Suffer Irreparable Harm Absent a Stay and the Balance
 10 of Hardships Tips in his Favor

11 As demonstrated herein, a stay of execution is necessary because otherwise
 12 Dixon will be executed in violation of the Eighth Amendment. *Ford*, 477 U.S. 399;
 13 *Panetti*, 551 U.S. 930. That harm is clear, serious and irreversible. Moreover, a stay
 14 of execution in this case will not substantially harm the State of Arizona. Dixon
 15 seeks merely to maintain the status quo until this action can be resolved on its
 16 merits. This is the very purpose of a preliminary injunction. *See Tanner Motor*
 17 *Livery, Limited v. Avis, Inc.* 316 F.2d 804, 808 (9th Cir. 1963) ("It is so well settled
 18 as to not require citation of authority that the useful function of a preliminary
 19 injunction is to preserve the status quo ante litem pending a determination of the
 20 action on the merits."). Even if the stay is granted in error, and Dixon's Petition for
 21 Writ of Habeas Corpus ultimately denied, then the stay may be lifted and the State
 22 can expeditiously proceed towards a new execution date. Common sense dictates
 23 that this factor weighs in Dixon's favor.

24 iii. A Stay Furthers the Public Interest

25 Finally, a stay here would further the public interest, which is served by
 26 enforcing constitutional rights and by the prompt and accurate resolution of disputes
 27 regarding constitutional rights. *See Cooley v. Taft*, 430 F. Supp. 2d 702, 708 (S.D.
 28 Ohio 2006) ("[T]he public interest has never been and could never be served by

1 rushing to judgment at the expense of a condemned inmate’s constitutional rights.”)

2 Dixon acknowledges that the State has a “strong interest in proceeding with
3 its judgment.” *Beardslee v. Woodford*, 395 F.3d 1064, 1068 (9th Cir. 2005).
4 However, the State’s retributive purpose for imposing capital punishment is called
5 into question where an individual’s mental state is so distorted “that his awareness
6 of the crime and punishment has little or no relation to the understanding of those
7 concepts shared by the community as a whole.” *Panetti*, 551 U.S. at 959. The
8 execution of a mentally incompetent person “serves no retributive purpose.” *Id.* at
9 933. It “simply offends humanity.” *Id.* at 958 (quoting *Ford*, 477 U.S. at 407–08).
10 The State itself and the citizens of Arizona have a compelling interest in ensuring
11 that such an offense does not occur.

12 **IV. Conclusion**

13 For the foregoing reasons, Dixon respectfully requests that this Court (1)
14 issue a stay, enjoining Dixon’s execution which is currently scheduled for May 11,
15 2022 at 10 a.m.; and (2) permit full briefing and argument on his *Ford* claim
16 challenging his mental competency to be executed as alleged in the concurrently
17 filed petition for writ of habeas corpus.

18 Respectfully submitted this 9th day of May, 2022.

19
20 Jon M. Sands
21 Federal Public Defender
22 District of Arizona

23 Cary Sandman
24 Amanda C. Bass
25 Eric Zuckerman
Assistant Federal Public Defenders

26 s/ Amanda C. Bass
27 Counsel for Petitioner
28

Certificate of Service

I hereby certify that on May 9, 2022, I electronically filed the foregoing Motion for Stay of Execution with the Clerk's Office using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Jessica Golightly
Assistant Paralegal
Capital Habeas Unit